

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

74-1506

ORIGINAL

In The
United States Court of Appeals
For The Second Circuit

ROBERT FROSS STAPLIN,

Plaintiff-Appellant.

- against -

MARITIME OVERSEAS CORP.,

Defendant-Appellee.

*On Appeal from the United States District Court for the
Southern District of New York*

BRIEF FOR PLAINTIFF-APPELLANT

HENRY ISAACSON

Attorney for Plaintiff-Appellant

38 Park Row

New York, New York 10007

(212) 267-6557

HENRY ISAACSON
FRANCIS J. DOOLEY
*Of the New Jersey Bar
On the Brief*

(7935)

LUTZ APPELLATE PRINTERS, INC.
Law and Financial Printing

South River, N. J.
(201) 257-6850

New York, N. Y.
(212) 565-6377

Philadelphia, Pa.
(215) 563-5587

Washington, D. C.
(202) 783-7288

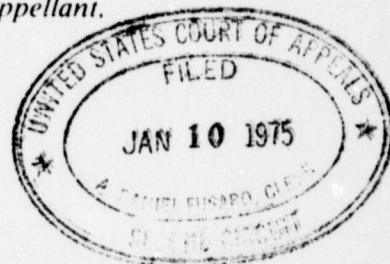


TABLE OF CONTENTS

	Page
Statement of Facts	1
Statement of the Case	2
Point I. The trial Judge erred in ordering remittitur, i.e. reducing the jury's award for damages to the plaintiff-appellant.	4
Point II. As a matter of law, there was substantial evidence to support the jury verdict for lost wages.	6
Conclusion	8

TABLE OF CITATIONS

Cases Cited:

Atlantic & Gulf Stevedores Inc. v. Ellerman Lines, Ltd., et al, (1962) 369 U.S. 355, 7 L.Ed. 2d 798, 82 S.Ct. 78	7
Chicago R. I. and Pac. R.R. Co. v. Speth, 404 F.2d 291 (8th Cir. 1968)	7
Conte v. Flota Mercante Del Estado, 277 F.2d 664 (C.A. 2d 1960)	7
Dimick v. Scheidt, 293 U.S. 474, 55 S.Ct. 296	5

Contents

	Page
Fleming v. American Export Esbrandtsen Lines, Inc., 451 F.2d 1329 (C.A. 2d 1971) at 1332	7
<u>United States Constitution Cited:</u>	
Seventh Amendment	4, 7
<u>Other Authorities Cited:</u>	
Damages to Persons and Property, Howard L. Oleck, Page 145, §108, 1961, Central Book Company, Inc.	5
25 C.J.S. Damages, Section 196	4

5

STATEMENT OF FACTS

The plaintiff-appellant, Robert Staplin, hereinafter sometimes referred to as plaintiff-appellant, was injured in the course of his employment as a merchant seaman, aboard the S/S Overseas Ulla, on or about March 1, 1973, while the vessel was at sea and in navigable waters. The plaintiff-appellant was the vessel's Chief Pumpman. The vessel, a tanker, was owned and controlled by the defendant-appellee, Maritime Overseas Corp., hereinafter sometimes referred to as the defendant-appellee.

10

The plaintiff-appellant injured his right foot (Pg. 10 - 11). He was a permanent employee of the vessel (Pg. 55). He left the vessel with a Master's Certificate to seek medical treatment at the United States Public Health Service, New York City (7a). He was found Not Fit For Duty from March 27, 1973 to May 30, 1973 (8a-9a).

15
20

STATEMENT OF THE CASE

This matter was tried before a jury commencing March 21, 1974, in the court of the Honorable Richard H. Levet, J., U.S.D.C. The trial was bifurcated. The jury found that the defendant-appellee, Maritime Overseas Corporation, was liable for damages having breached its Warranty of Seaworthiness to the plaintiff-appellant. Thereafter, the question of damages became the subject of the second part of the trial.

10

The plaintiff-appellant testified that:

(1) He was employed as a Chief Pumpman aboard S/S Overseas Ulla on this particular voyage from January 19 to March 22, 1973 (14a);

15

(2) He was a permanent employee (10a) and would not have had to leave the vessel had he not been injured (10a);

20

(3) He left the vessel in New York City with a Master's Certificate to be treated at the United States Public Health Service Marine Hospital (7a); ;

(4) He was pronounced Not Fit For Duty by the United States Public Health Service on March 27, 1973 (8a)

25

(5) He was pronounced Fit For Duty on May 30, 1973, by the United States Public Health Service (9a);

30

5

(6) The cargo for the voyage was grain to Russia and fuel oil from Russia to the United States (4a).

Staplin's earnings for the voyage were established by P-2 in Evidence (15a) and showed that by defendant-appellee's payroll record, the plaintiff-appellant earned \$2,125.78 for two months and four days (15a).

10

The jury returned a money verdict for the defendant-appellee in two parts (21a-22a):

(1) To question 1B pertaining lost wages suffered by plaintiff-appellant.....\$2,400.

15

(2) To question 2B, pertaining to Pain and Suffering.....\$1,200.

(3) Total Verdict.....\$3,600.

After the jury was polled, it was discharged (22a-23a).

20

Judge Levett then reduced the jury verdict of \$2,400. to \$1,135. His unilateral decision to reduce the jury award was that the average earnings of the plaintiff-appellant for the four years preceeding the injury was the only basis for determining past lost wages; and that same averaged \$6,200. per year, which prorated over two months and six days approximated \$1,135. (23a-30a), i.e. the period that the plaintiff-appellant was Not Fit For Duty.

25

30

POINT I

THE TRIAL JUDGE ERRED IN ORDERING
REMITTITUR, I. E. REDUCING THE
JURY'S AWARD FOR DAMAGES TO THE
PLAINTIFF-APPELLANT.

The Seventh Amendment of the United States Constitution states:

"In suits at common law, when the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.."

The amount of a damage verdict is primarily the function of the jury under the guideline of proper instructions by the court. The jury is that part of our judicial system which is instructed with the determination of facts and the amount of damages is a question of fact, 25 U.S.S. Damages, Sect. 196.

Staplin's earning record as Chief Pumpman aboard S/S Overseas Ulla were put in Evidence (P-2, 31a).

The plaintiff-appellant testified that when the vessel, a tanker, carried liquid cargo, he earned more than when it carried grain cargo (10a-12a), because he would have to work 36 hours to get the cargo out (16a).

Judge Levett charged the jury that there were two possible bases for determining the plaintiff-appellant's claim for lost wages: (1) The record of plaintiff-appellant's earnings while employed by defendant-appellee (P-2, 31a; 17a-18a), and (2) The defendant-appellee's submission of Staplin's

four year earning records (19a).

The verdict indicated that the jury believed that the plaintiff-appellant was a permanent employee of defendant-appellee and that if he had not been injured, he would have continued to have been employed as Chief Pumpman aboard S/S Overseas Ulla during his period of disability. The jury, therefore, awarded, as past lost wages, based on plaintiff-appellant's earning record aboard defendant-appellee's vessel, the sum of \$2,400.00 to plaintiff-appellant, i.e., approximately the money he would have earned if his employment had not been terminated because of his injury.

There was therefore basis for a Jury Verdict for an award of money damages based upon same.

"The rule is that a verdict is presumed to be correct (and just) until it can be shown with reasonable conviction that the jury (1) violated the law, or (2) gave way to passion, prejudice or partiality, or (3) made a mistake of law or fact, or (4) based its finding on a misunderstanding of law or fact, or (5) acted carelessly or perversely." Damages to Persons and Property, Howard L. Oleck, Page 145, § 108, 1961, Central Book Company, Inc.

"The question of damages being one for the jury, the court should not interfere, unless the damages are either so small or so excessive as to justify the inference of gross mistake or undue bias." Damages to Persons and Property, supra, Page 146, § 108.

The finality of a jury's verdict in the Federal courts and the right of the trial Judge to interfere with same, has been settled by the U. S. Supreme Court in Dimick v. Scheidt, 293, U.S. 474, 55 S. Ct. 296.

".....Where the verdict returned by a jury is palpably and grossly inadequate or excessive, it should not be permitted to stand; but, in that event, both parties remain entitled, as they were entitled in the first instance, to have a jury properly determine the question of liability and the extent of the injury by an assessment of damages. Both are questions of fact..."

5

10

POINT II

AS A MATTER OF LAW, THERE WAS SUBSTANTIAL EVIDENCE TO SUPPORT THE JURY VERDICT FOR LOST WAGES

There is no question that there was substantial evidence presented to the jury in this case upon which to base its money award for lost wages to the plaintiff-appellant. The mere fact that upon the same evidence, a finding could have been made of a different amount, does not furnish a legal basis for interference with the jury's verdict by the trial judge.

15

20

The jury was given a proper charge (17a-18a). In addition, the wage statement for the voyage (31a) was admitted in Evidence without objection (13a-14a). Surely, defendant-appellee's attorney understood the nature and purpose of this piece of evidence. At no point during the trial or the charge to the jury was any attempt made to limit the evidential value of P-2.

25

This verdict of \$2,400.00 by the jury should have been dispositive of plaintiff-appellant's claim for lost wages:

30

"It is well settled that a jury's misunderstanding of testimony, misapprehension of law, errors in computation, unsound reasoning or other improper motives cannot be used to impeach a verdict. These matters all inhere in the verdict itself."

Chicago R. I. & Pac. R.R. Co. v. Speth, 404 F 2d 291 (8th Cir. 1968).

See also Atlantic & Gulf Stevedores Inc. v. Ellerman Lines Ltd., et al, (1962) 369 U.S. 355, 7 L Ed. 2d 798, 82 S. Ct. 78, where the Supreme Court stated at 364:

"Where there is a view of the case that makes the jury's answers to special interrogatories consistent, they must be resolved that way. For a search for one possible view of the case that will make the jury's findings inconsistent results in a collision with the Seventh Amendment."

The court further indicated to the jury that P-2 could be used in determining the quantum of damages (20a).

The court permitted, erroneously, the introduction of the plaintiff-appellant's earnings for four years preceding the accident (20a). The average of such earnings are only evidential of future lost earnings, not past lost earnings Fleming v. American Export Esbrandtsen Lines, Inc., 451 F 2d, 1329 (C. A. 2d, 1971) at 1332; Conte v. Flota Mercante del Estado, 277 F 2d 664 (C. A. 2d, 1960).

Here, there was no claim for future lost wages or earning capacity. The plaintiff-appellant's claims for lost earnings were limited exclusively to the period from March 27, 1973, to May 1, 1973.

By granting the defendant-appellee's attorney the

motion to reduce the \$2,400.00 verdict to \$1,135.00 (24a),
Judge Levet committed reversible error.

5

CONCLUSION

It is respectfully submitted that Judge Levet
unfairly took a one-sided view of the matter of damages
throughout the trial. Therefore, his overturning of the
jury verdict respecting the award for part lost earnings
should be reversed, and the original total verdict reinstated,
together with interest and costs.

10

Respectfully submitted,

15

HENRY ISAACSON
Attorney For Plaintiff-Appellant
38 Park Row
New York City, New York

On the Brief:

Henry Isaacson, Esq.

Francis J. Dooley, Esq. of
the New Jersey Bar

20

25

30

U S COURT OF APPEALS: SECOND D CIRCUIT

STAPLIN,

Plaintiff-Appellant,

- against -

MARITIME OVERSEAS CORP.,

Defendant-Appellee.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

ss.:

I, James Steele,

being duly sworn,

depose and say that deponent is not a party to the action, is over 18 years of age and resides at
250 West 146th, Street, New York, New York

That on the *10th* day of *January* 1975 at *1 State St. Plaza, New York*

deponent served the annexed *Brief for Plaintiff-Appellant* upon

Haight, Gardner, Poors & Havens

the *2* in this action by delivering *is* a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the Attorney(s) herein.

Sworn to before me, this *10th*
day of *January* 1975

Robert T. Brin

James Steele
JAMES STEELE

ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0418950
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975

